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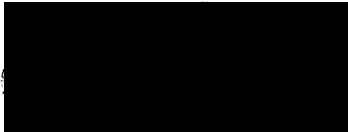
FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: JUN 21 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the equivalent of an advanced degree as he did not hold a "United States baccalaureate degree or a foreign equivalent degree."

On appeal, counsel asserts that the beneficiary possesses a foreign degree equivalent to a United States baccalaureate degree. In support of the appeal, counsel quotes a letter from Citizenship and Immigration Services' (CIS) Office of Adjudications.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). Regarding the "equivalent" of an advanced degree, the regulations state: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

As the beneficiary possesses a foreign three-year bachelor's degree, the sole issue in this proceeding is whether that degree may be considered a "foreign equivalent degree" to a United States baccalaureate degree so that the beneficiary would have the equivalent of an advanced degree.

The record contains an approved Department of Labor Form ETA-750, Application for Alien Labor Certification (labor certification). Regarding the minimum level of education and experience required for the proffered position, Part A of the labor certification reflects the following:

- Item 14: 6 years of college; an M.S. "or foreign deg. equiv." in computer information systems;
Three years of experience as a programmer analyst, software engineer, or database design analyst.
- Item 15: "The position requires a Master's Degree or equivalent, which can be met through either a Bachelor's Degree plus 5 years of progressive experience, or a Master's Degree plus 3 years of progressive experience."

The beneficiary received a Bachelor of Science degree from the University of Calicut in India after three years of study ending in April 1993. The beneficiary subsequently earned the following certificates:

Information & Systems Management Proficiency	5/93 – 11/93	APTECH
Sybase & PowerBuilder	9/94 – 1/95	BITECH
UNIX Engineer	11/94 – 12/94	IMAT

The original petition was accompanied by a credentials evaluation from A.E.S.F., Inc. In evaluating the beneficiary's Bachelor of Science degree, the evaluator stated that the beneficiary's "three-year degree course" was equivalent to "three years of college level study in a Bachelor of Science program, at a regionally accredited institution in the United States."

After considering the beneficiary's university studies, the evaluator evaluated the beneficiary's additional training (listed above) that the beneficiary received after his bachelor's degree. The evaluator noted the beneficiary's "one year of study at Aptech, at UNIX System Laboratories, and at Bhari Information Technology Systems," but the evaluator did not state whether the beneficiary's additional training was received at accredited institutions of higher education in India. Based on the record of proceeding, the beneficiary appears to have received the additional training through "in house training" through technical institutes.

Based on the beneficiary's combined education and training, the evaluator concluded that the beneficiary held the "Combined Equivalent Degree" of a "Bachelor of Science in Computer Information Systems, at a regionally accredited institution in the United States."

In a letter accompanying the petition, [REDACTED] the petitioner's human resources manager, acknowledged that the petitioner had filed a previous petition on the beneficiary's behalf, which the director had denied because the beneficiary did not possess a foreign degree equivalent to a United States bachelor's degree. In the present petition, the petitioner essentially resubmitted the same materials submitted with the prior petition, along with copies of letters from [REDACTED] Director of the Business and Trade Services Branch of CIS's Office of Adjudications. We shall discuss these letters in the context of the appeal.

The director denied the petition, stating that, although the beneficiary had the required five years of experience applicable toward an advanced degree equivalency, he does not have the required baccalaureate degree or its foreign equivalent degree. The director acknowledged the letters from [REDACTED] but stated that the opinions set forth in those letters "have not been adopted as Service policy" and therefore "are not binding on this case."

On appeal, counsel states: "An unchallenged foreign education credentials evaluation clearly attests that the beneficiary holds the U.S. equivalent of a Bachelor of Science Degree in Computer Information Systems." The credential evaluation does not state that the beneficiary possesses a "foreign equivalent degree," i.e., a degree that is equivalent to a United States baccalaureate degree. Rather, the evaluation indicates that the beneficiary's three years of academic education, followed by non-academic professional training, amount in the aggregate to the equivalent of a baccalaureate degree. The regulation at 8 C.F.R. § 204.5(k)(2) does not call for the "equivalent of a degree"; it calls for a "United States baccalaureate degree or a foreign equivalent degree."

Counsel cites previously submitted copies of letters, respectively dated January 7, 2003 and July 23, 2003, from [REDACTED] (identified above). The letters discuss whether a "foreign equivalent degree" must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees.

The January 7 letter was written in response to a letter from an attorney who inquired whether, for purposes of 8 C.F.R. § 204.5(k)(2), a "foreign equivalent degree" is limited to a "foreign degree" or whether "foreign education" may count, "when no formal degree is conferred or a 3 year foreign degree combined with a diploma that is determined to be equivalent to a United States degree." In response, Mr. [REDACTED] stated:

You ask whether the reference to "a foreign equivalent degree" in 8 C.F.R. 204.5(k)(2) means that the *foreign equivalent advanced degree* must be in the form of a single degree. Despite the

use of the singular “degree,” it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met.

(Emphasis added.) Subsequently, another attorney asked Mr. [REDACTED] whether a three-year foreign bachelor’s degree, coupled with a post-graduation diploma, may be deemed to be the equivalent of a U.S. bachelor’s degree.” In his July 23 letter, Mr. [REDACTED] replied: “In my opinion such a combination may be deemed the equivalent of a four-year U.S. bachelor’s degree.” Here again, we note the distinction between an “equivalent degree,” i.e., a degree that is equivalent to a bachelor’s degree, and a collection of multiple credentials that collectively form the “equivalent of a degree.” Mr. [REDACTED] opined that “an alien in this scenario may combine that equivalent degree with five years of progressive experience in the specialty in order to satisfy the ‘advanced degree’ requirements” in the statute and regulations. Elsewhere in the letter, Mr. [REDACTED] observed that his comments represented “my personal opinion.”

Considering the letters discussed above, counsel asserts that the beneficiary has a “foreign equivalent degree” to a United States baccalaureate degree.

Counsel’s assertions are not persuasive. First, a three-year bachelor’s degree will not be considered to be the “foreign equivalent degree” to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). According to India’s Department of Education, the nation’s educational degree structure provides for both three-year and four-year bachelor’s degree programs. After 12 years of primary and upper primary school, a bachelor’s degree in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor’s degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally requires four years of education. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlweb/higedu.htm> (printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be deemed to be the “foreign equivalent degree” to a United States baccalaureate degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary’s three-year degree from will not be considered the “foreign equivalent degree” to a United States baccalaureate degree for purposes of this preference visa petition.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The evaluation submitted by the petitioner does not force CIS to conclude that the beneficiary possesses a foreign degree that is equivalent to a United States baccalaureate.

Also, the letter from the Office of Adjudications is not persuasive. The succinct response of [REDACTED] his first letter specifically refers to “the foreign equivalent advanced degree” as the point of concern, rather than the phrase “United States baccalaureate degree or a foreign equivalent degree.” Accordingly, the response appears to specifically address the phrase “foreign equivalent degree” as it relates to the definition of advanced degree at 8 C.F.R. § 204.5(k)(2): “‘Advanced degree’ means any United States academic or professional degree or a foreign equivalent degree above the baccalaureate level.” Mr. [REDACTED] response is reasonable when considered in

the context of a “foreign equivalent degree” to a United States advanced degree; by definition, an advanced degree is a degree above the baccalaureate level, thereby requiring multiple degrees.

However, if applied to the phrase “United States baccalaureate degree or a foreign equivalent degree” contained at 8 C.F.R. § 204.5(k)(2), the letter’s reasoning would lead to results directly contrary to the regulations, statute, and the intent of Congress. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added). There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Although the preamble to the publication of the final rule specifically dismissed the option of equating “experience alone” to the required bachelor’s degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, non-academic professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the “foreign equivalent degree” to a United States baccalaureate degree. Whether the equivalency of a bachelor’s degree is based on work experience alone or on a combination of multiple lesser degrees, the analysis results in the “equivalent” of a bachelor’s degree rather than a “foreign equivalent degree.” In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the “foreign equivalent degree” to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to bachelor’s degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. In addition, a combination of degrees which, when taken together, equal the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree.

Furthermore, the Office of Adjudications letters are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer’s analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding).

As previously noted, the ETA-750 labor certification specifically requires a master’s degree in Computer Information Systems and three years of experience, or a bachelor’s degree and five years of experience. The

petitioner has not claimed that the beneficiary possesses a United States master's degree or a foreign equivalent degree. And, as previously explained, the petitioner has not established that the beneficiary possesses the minimum alternate qualifications, a bachelor's degree with five years of experience, as the beneficiary's three-year degree is not a "United States baccalaureate degree or a foreign equivalent degree." Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act, as he does not have the minimum level of education required for the equivalent of an advanced degree.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. The denial of this petition does not bar the filing of a new petition on behalf of the beneficiary under section 203(b)(3) of the Act as a skilled worker with more than two years of training and experience. We note, however, that regardless of the classification sought, the beneficiary does not and cannot meet the minimum requirements as set forth on the labor certification filed on April 2, 2001.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.